

OFFICE OF THE ATTORNEY GENERAL



137
80-00320

CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

APR 10 1980

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130
AREA (205), 824-5150

LEE L. HALE
DEPUTY ATTORNEY GENERAL
WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT
WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL
JANIE NOBLES
ADMINISTRATIVE ASSISTANT

Hinton Mitchem, Senator
9th District
Senate Chamber
Montgomery, Alabama 36130

Education - Trade Schools and
Junior Colleges - Snead Junior
College

Governor may provide for the
operation and maintenance of
Snead Junior College as a
Junior College and/or as a
Community College or Technical
College, but the approval of
the Commission on Higher Educa-
tion must be obtained prior to
implementing such executive
order.

Dear Senator Mitchem:

This office is in receipt of your request for an opinion
as follows:

"In 1967 Snead State Junior College was
authorized and accepted as a junior college
which would be operated and maintained by
the State of Alabama.

"At the present time the local Legislative
Delegation wants to authorize Snead to
remain as a junior college but also
become a technical school or community
college and we would like to operate
for one year in the capacity of a junior
college or technical school without
any additional appropriation from the
Legislature.

"Title 16-60-150 of Article 7 of the Alabama Code of 1975 authorized the Governor, by Executive Order, to create this junior college and my question now is whether or not the Governor, by Executive Order, can further authorize Snead State Junior College to become a community college or technical school.

"Enclosed is a copy of Executive Order No. 9 dated September 29, 1967 where Governor Lurleen B. Wallace authorized Snead Junior College to start its operation as a State institution.

"I would appreciate your opinion as soon as possible again on whether or not Governor James, by Executive Order, can officially designate Snead as a technical or community college."

Section 16-60-150, Code of Alabama 1975, reads as follows:

"Upon receipt of a proper deed or such other conveyances as may be appropriate for the purpose, as determined by the governor, he may accept on behalf of the state the property, buildings, facilities and effects appertaining to the Snead Junior College located at Boaz in Marshall County; and by executive order he may provide for the operation and maintenance of the college as a state educational institution of the same kind as the institutions provided for in sections 16-60-80 through 16-60-96."

Pursuant to the authority of this section Governor Lurleen B. Wallace by Executive Order No. 9, dated September 29, 1967, ordered that Snead Junior College should become a part of the State Junior College System. This was legally permissible because the Governor was empowered to provide for the operation and maintenance of Snead as a state educational institution of the same kind as those provided for in

Sections 16-60-80 through 16-60-96, Code of Alabama 1975. These sections authorize the establishment of a system of Trade Schools (now called Community or Technical Schools) and Junior Colleges.

It is the opinion of this office that the grant of power conveyed to the Governor by Section 16-60-150 is sufficiently broad to allow the Governor to promulgate an executive order establishing Snead as a Junior College (which Governor Wallace did in 1967) or as a Community College or to authorize both types of institutions at the Snead Junior College.

There is an additional requirement which must be satisfied prior to the implementation of any Executive Order by the Governor. This is a requirement which was not in existence at the time of the issuance of Executive Order Number 9 in 1967. That requirement is imposed by Act 79-461, Regular Session of the Legislature 1979. Section 8 of Act 79-461 in pertinent part states as follows:

"The governing boards of public institutions of higher education in this State and the campuses under their governance or supervision shall not hereafter undertake the establishment of any new unit or program of instruction for academic credit with state funds before submitting plans for the new unit or program to the Commission for its review, evaluation, and approval. No state funds shall be expended by any public institution on any new unit or program of instruction which has not been approved by the Commission. Any such plan submitted to the Commission, or its staff, however, and not receiving final action by the Commission within ten (10) months of submission shall be considered approved. The term 'new unit of instruction,' includes the establishment of a college, school, division or institute, and includes the establishment of any new branch or campus. The term does not include reasonable extensions

or alterations of existing curricula, or programs which have a direct relationship to existing programs; and the Commission may, under its rule-making power, define the character of such reasonable extensions and alterations."

This language requires that the Commission on Higher Education must approve the "establishment of any new unit or program of instruction" and prohibits the expenditure of any State funds on any "new unit or program of instruction" which has not been approved by the Commission. Since the term "new unit of instruction" is defined in the Act to include the establishment of a college, school, division, or institute the approval of the Commission on Education must be obtained before any executive order which might be issued by the Governor in this regard can become effective.

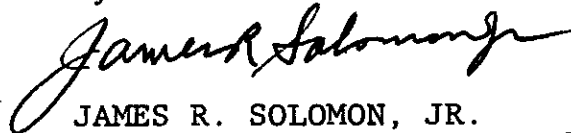
In summary, it is the opinion of this office that the Governor may issue his executive order establishing Snead Junior College as a community college, but the implementation of such executive order cannot be accomplished until the Commission on Higher Education gives its approval to the establishment of a community college at Snead and to the program of instruction to be offered at such community college.

If we can be of further assistance, please contact me.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General

By-



JAMES R. SOLOMON, JR.
Assistant Attorney General

JRSjr:ln